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**FISCAL IMPACT STATEMENT**

**LS 6468**  
**BILL NUMBER: SB 293**

**NOTE PREPARED: Feb 1, 2010**  
**BILL AMENDED: Jan 28, 2010**

**SUBJECT: Bail.**

**FIRST AUTHOR: Sen. Waterman**  
**FIRST SPONSOR:**

**BILL STATUS: 2<sup>nd</sup> Reading - 1<sup>st</sup> House**

**FUNDS AFFECTED:      GENERAL  
                                 DEDICATED  
                                 FEDERAL**

**IMPACT: Local**

**Summary of Legislation:** (Amended) This bill makes changes to the Indiana bail law concerning: (1) notices to sureties and bond agents; (2) circumstances under which a cause is determined; (3) failure to appear; and (4) substitution of bail for deposits.

**Effective Date:** July 1, 2010.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** This bill is expected to have minimal effect on local court operations. However, no published data exists which shows the percentage of criminal cases that this bill could affect.

*Failure to Appear When Defendant Is Released Under Notices to Sureties and Bond Agents* – Current law has no time table for when the clerk is required to mail a notice to the surety agent that a defendant, under the supervision of the surety agent, has failed to appear in court. As proposed, the clerk of the court would be required to mail a notice to the bail bond agent within 30 days of the court noting that the defendant failed to appear.

LSA found no published statewide information reporting the number of cases when a defendant failed to appear in court. Further more, it is not known whether clerks currently mail out these failure-to-appear notices within 30 days. Assuming that no county mails these notices out within 30 days, the following published information is used to illustrate this provision's possible effect on each county:

- The felony and misdemeanor filings in 2008 for all 92 counties from the *Indiana Judicial Report*.
- Statistics on the percentage of pretrial releases from the Bureau of Justice Statistics (BJS) that were reported from the 75 largest counties in the United States.

BJS reports that 33% of all criminal defendants in the counties reporting were released from jail on a surety bond prior to their court hearings and that 29% either were rearrested, failed to appear, or were fugitives. The estimated defendants who violated bond were divided by 52 to represent the potential number of cases each county could handle each week in which a criminal defendant violates conditions of their surety bond in court.

The following table shows the weekly number of failure-to-appear notices distributed in all 92 counties. On average, the courts in 90 counties will presumably mail 25 or less notices each week within 30 days. Counties with more average weekly filings would more likely be affected by this requirement if they do not have adequate staff and office equipment.

Estimated Defendants Who Fail to Appear Each Week	Number of Counties	Cumulative
5 or less	72	72
More than 5 or equal to 10	8	80
More than 10 or equal to 20	7	87
More than 20 or equal to 25	3	90
46 per week	1	91
85 per week	1	92

*Failure to Appear After Posting a Cash Bond* – Under current law, when a defendant fails to appear in court for any reason after being admitted to bail on a cash bond with the clerk of the circuit court, the court is required to issue a warrant for the defendant’s arrest. If a civil action has been filed by the victim of the crime, the cash deposit will not be forfeited until the court has entered a final judgment against the defendant.

As proposed, if the final judgment in a civil suit has been entered, the court is required to declare the bond forfeited no earlier than 120 days after the defendant has failed to appear in court. LSA found no published data that shows the length of time that courts currently take to forfeit these bonds in Indiana.

#### Definitions:

**Cash bond** – The defendant deposits a percentage (usually 10%) of the full bail amount with the court. This percentage of the bail is returned after the disposition of the case, but the court often retains a small portion for administrative costs. Defendants failing to appear in court are liable to the court for the full amount of the bail. (IC 35-33-8-3.2(a)(2))

**Surety bond** – A bail bond company signs a promissory note to the court for the full bail amount and charges the defendant a fee for the service (usually 10% of the full bail amount). If the defendant fails to appear, the bond company is liable to the court for the full bail amount. Frequently the bond company requires the defendant to post collateral in addition to the fee. (IC 35-33-8-3.2(a)(1)(B))

**Explanation of Local Revenues:**

**State Agencies Affected:**

**Local Agencies Affected:** Courts with criminal jurisdiction; Clerks of the circuit court.

**Information Sources:** *2008 Indiana Judicial Report; Bureau of Justice Statistics Pretrial Release of Felony Defendants in State Courts*, November, 2007.

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